

State of California
Regional Water Quality Control Board
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT
May 8, 2002

ITEM: 7

SUBJECT: Complaint No. 2000-256 for Administrative Civil Liability (ACL) against Chung Kwan and Hui Mei Hsu (Mr. & Mrs. Hsu) for failure to submit a corrective action plan for the Budget Trade & Gas facility, Escondido, San Diego County. (Sue Pease)

PURPOSE: The purpose of this item is to reopen the public hearing held on December 13, 2000, April 11, 2001 and October 10, 2001 to receive additional testimony on ACL Complaint No. 2000-256.

PUBLIC NOTICE: The public was notified of this hearing and tentative order in the agenda for the May 8, 2002 meeting of the Regional Board. The agenda was mailed to interested persons on April 25, 2002.

DISCUSSION: Complaint No. 2000-256 recommends the imposition of an ACL of \$146,500 against Mr. and Mrs. Hsu for failure to submit a corrective action plan for remediation of groundwater pollution as required by California Water Code (CWC) section 13267. This is the second ACL for the same violation. The first ACL, Order No. 2000-23, covered a period of violation from September 1, 1999 to December 8, 1999 (Supporting Document 2). The December 8, 1999 hearing was rescheduled to February 9, 2000. The period of the violation for the second ACL complaint was from February 10, 2000 through November 29, 2000. Evidence on the ACL complaint was accepted into the record at the December 13, 2000 hearing.

At the conclusion of the December 2000 hearing, the Regional Board deferred acting on the ACL complaint against Mr. & Mrs. Hsu until the February 2001 meeting to allow Mr. & Mrs. Hsu time to put forth a good faith effort to comply with orders of the RWQCB. Since then, the RWQCB has considered adopting the tentative order for a second ACL penalty at hearings held in April and October 2001. Both times, the Regional Board deferred acting on the ACL complaint to allow a longer period of time for Mr. Hsu to demonstrate compliance. At the October 2001 meeting the RWQCB requested that the Hsu's ability to pay the first assessed ACL penalty of \$35,680 be analyzed by the State Water Resources Control Board Office of Statewide Initiatives. The item was to be heard at the April 2002 Regional

Board meeting. Since the “Ability to Pay” analysis was not completed, the hearing was postponed until the May 2002 Regional Board meeting.

The “Ability to Pay” analysis (Supporting Document 3) states that the Hsu family and Budget Trade & Gas cannot afford to pay the first ACL of \$35,680, nor the larger penalty under consideration in this agenda item.

Compliance with Cleanup and Abatement Order No. 2000-255 was accomplished with submittal of free product recovery reports, ground water monitoring reports, and delineation of ground-water contamination. A groundwater monitoring data and ground water monitoring well installation report is due April 30, 2002. An alternative remedial action proposal is due May 1, 2002. The alternative remedial action is necessary because the pilot test for soil vapor extraction, performed in December 2001, demonstrated that technology would not remediate the pollution in the soil and ground water sufficiently.

Mr. Hsu has made payments totaling \$1,040 on the first ACL penalty. However, a payment has not been received since October 2001.

To overcome communication difficulties for Mr. Hsu and to ensure that Mr. Hsu understands the regulatory actions required of him, staff met with Mr. Hsu and his consultant on November 8, 2001, and March 1, 2002. A Mandarin Chinese translator attended both meetings to help Mr. Hsu understand what was discussed. A Mandarin Chinese translator will be present at the May 8, 2002 RWQCB meeting.

LEGAL CONCERNS:

None

SUPPORTING
DOCUMENTS:

Agenda packages for February 21, 2001, and October 10, 2001 are enclosed. The agenda package sent for the March 14, 2001 Regional Board meeting (Mr. Hsu’s financial documents) is not included due to the volume of material. In its place is the April 11, 2001 Executive Officer’s Summary Report (EOSR). The following documents are applicable for Item 7. They are:

Supporting Document 1 – Tentative Order No. R9-2002-0122
Supporting Document 2 – Chronology of ACLs
Supporting Document 3 – “Ability to Pay” Analysis
Supporting Document 4 – Chronology of Events
Supporting Document 5 – Table of compliance dates
Supporting Document 6 – Addendum No. 3 to CAO
No. 2000-255

Supporting Document 7 – Diagram of extent of ground water contamination

Supporting Document 8 – Memo to file: November 8, 2001 meeting

Supporting Document 9 – January 7, 2002 directive for technical report of installation of additional ground water monitoring wells and monitoring data

Supporting Document 10 – February 21, 2002 directive for submittal of remedial action plan

Supporting Document 11 – Memo to file: March 1, 2002 meeting

Supporting Document 12 – February 21, 2001 agenda package

Supporting Document 13 – April 11, 2001 EOSR

Supporting Document 14 – October 10, 2001 agenda package

RECOMMENDATION:

Staff recommends the RWQCB suspend a decision on ACL complaint No. 2000-256. Mr. Hsu has not fully paid his consultant for work performed, and there is the possibility that the consultant will discontinue working for Mr. Hsu if they are not paid in full. In the event that this happens, the reports due April 30, 2002 and May 1, 2002 will not be submitted and Mr. Hsu will be out of compliance. Additional administrative civil liabilities could be assessed if technical reports are not submitted. Staff also recommends to discontinue collecting payments on the first ACL based on the conclusion of the “Ability to Pay” analysis, so Mr. Hsu’s resources can be directed toward compliance.